



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

May 15, 2012

WA State Department of Natural Resources  
Attn: Chad Unland  
713 Bowers Road  
Ellensburg, WA 98926-9301

**Re: Seasonal Change Authorization No. CS4-16312(A1)P@2 (for 2012 season only).**

Dear Mr. Unland:

**DECISION:** This one year SEASONAL CHANGE AUTHORIZATION to add a point of diversion (POD) to the NW $\frac{1}{4}$ NW $\frac{1}{4}$  Section 18, T. 5 N., R. 26 E.W.M., and transfer 213 acres of irrigation to the E $\frac{1}{2}$  Section 16, T. 7 N., R. 26 E.W.M., Benton County, during the 2012 irrigation season, at a maximum instantaneous diversion rate of 3.97 cubic feet per second (cfs) and a maximum quantity of 571 acre-feet (ac-ft) is granted subject to the following provisions and conditions:

**Department of Fish and Wildlife**

1. No dam or weir shall be constructed in connection with this diversion.
2. The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria. <http://www.wdfw.wa.gov/reg/regions.htm>

**Quantity Limits, Flow and Regulation**

1. This change does not authorize an enlargement of the diversion rate in cfs, the total annual quantity in ac-ft, or in number of total acres irrigated as described in S4-16312(A1)P.
2. At least 213 acres of the original place of use of S4-16312(A1)P shall be fallowed for the duration of the 2012 irrigation season. Irrigation of more than 1,000 acres during the 2012 irrigation season (April 1 to October 31) in the original place of use of S4-16312(A1)P (which authorizes up to 1,213 acres of irrigation) shall constitute a violation of the terms of this authorization, and will result in its immediate termination. Other enforcement actions, including but not limited to fines and/or penalties, may also follow as a result of a violation.

**FILE COPY**



### **Schedule and Inspections**

1. This Seasonal Change Authorization shall expire at the end of the 2012 irrigation season, being October 31, 2012, at which time the place of use and point of diversion shall revert back to that described under S4-16312(A1)P.
2. Department of Ecology (Ecology) personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

### **General Conditions**

1. You are advised that the issuance of this Seasonal Change Authorization by Ecology does not convey a right of access or other right to use land which you do not legally possess. Obtainment of such a right is a private matter between the applicant and the owner of the land.
2. The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.
3. Nothing in this authorization shall be construed as satisfying other applicable federal, state, or local statutes, ordinances or regulations.
4. Ecology assumes no liability for the purchase and/or construction of any permanent facilities in conjunction with this Seasonal Change Authorization. Applicants for seasonal change should not construe that a seasonal change will result in the granting of a permanent change of water right.

### **YOUR RIGHT TO APPEAL**

You have a right to appeal this decision to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this decision. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this document:

- File your appeal and a copy of this document with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this document on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- Serve a copy of your appeal and this decision in paper form - by mail or in person. (See address below.) E-mail is not accepted.



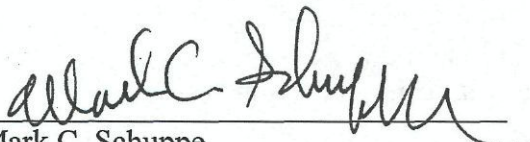
You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

**ADDRESS AND LOCATION INFORMATION**

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel RD SW Ste 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>  
To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>

DATED this 15<sup>th</sup> day of May, 2012.

  
Mark C. Schuppe  
Operations Manager  
Office of Columbia River

TP:MCS:RAZ (120507)

Enclosure: *Your Right to Be Heard*

By certified mail: 7007 2560 0001 7675 5608

Cc: Farmland Reserve



## Analysis

**Background:** This seasonal change application was assigned the tracking number CS4-16312(A1)P@2 and addresses 213 of some 1,100 acres of unauthorized irrigation occurring on land owned by the Washington Department of Natural Resources (WDNR). There is a complicated years-to-decades-long history of attempts at resolution between Ecology, WDNR, and WDNR's lessees. Other options in attaining compliance for the remaining 900-odd acres continue to be pursued by all parties.

**Water Right Attributes:** The attributes of S4-16312(A1)P are as follows:

**Priority Date:** March 9, 1970  
**Source:** Columbia River  
**Quantities:** 22.58 cfs, 4336 ac-ft/yr  
**Season of Use:** April 1 to October 31  
**Purpose of Use:** Irrigation of 1,213 acres  
**P.O.Ds:**  
1) SW $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 2, T. 5 N., R. 28 E.W.M.  
2) NW $\frac{1}{4}$ NW $\frac{1}{4}$  Sec. 15, T. 5 N., R. 27 E.W.M.  
3) NW $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 17, T. 5 N., R. 27 E.W.M.  
4) SW $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 8, T. 5 N., R. 26 E.W.M.  
5) GL 1 Sec. 12, T. 5 N., R. 27 E.W.M.  
6) SW $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 5, T. 5 N., 29 E.W.M.  
  
**Place of Use:** Sec. 8; the S $\frac{1}{2}$  of Sec. 10; the N $\frac{1}{2}$ , N $\frac{1}{2}$ S $\frac{1}{2}$ , and SW $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 14; Sec. 16; and Sec. 36 ALL in T. 6 N., R. 28 E.W.M.

**Proposal Attributes:** The proposed seasonal change is intended only for the 2012 irrigation season. The attributes of the proposal are as follows:

**Priority Date:** Subject change application received December 30, 2011  
**Source:** No change  
**Quantities:** Not specified  
**Season of Use:** Not specified  
**Purpose of Use:** No change  
**P.O.D.:** Add a POD located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$  Sec. 18, T. 5 N., R. 26 E.W.M. (Benton County Parcel No. 1185600000000000)  
**Place of Use:** Transfer 213 acres to within the E $\frac{1}{2}$  of Sec. 16, of T. 7 N., R. 26 E.W.M., in Benton County (Benton County Parcel No. 1167600000000000)

**Legal Requirements:** This change application is subject to the provisions of RCW 90.03.380 and 90.03.390. Under RCW 90.03.380, the place of use and point of diversion of a water right that has been applied to beneficial use may be changed if the change can be made without detriment or injury to existing rights.

Under RCW 90.03.390, seasonal or temporary changes in point of diversion or place of use can be made provided such change can be made without detriment to existing rights.

Under RCW 43.21C.035 and Chapter 197-11 WAC this temporary change is exempt from a SEPA review.



RCW 90.03.280 (public notice):

The subject application was filed on December 30, 2011. Public notice was published on March 14 and 21, 2012, in the Prosser Record-Bulletin; the signed affidavit of publication was received on March 29, 2012. There were no protests received during the 30 day protest period, which expired April 21, 2012.

RCW 90.03.380 (tentative determination of extent and validity):

The maximum instantaneous rate of diversion and maximum annual quantity to divert to irrigate the subject 213 acres were not included in the application and, instead, derive from the original values given in S4-16312(A1)P (hereafter referred to as "the permit"). As only 18% of the acres authorized under the permit are proposed for change, 18% of the Qi and Qa are considered. This calculates to 3.97 cfs and 761.4 ac-ft. These values were confirmed with the applicant by email. However, RCW 90.03.380 indicates that only water applied to beneficial use may be changed, as long as existing rights are not impaired. A tentative determination on the validity and extent of a right must therefore first be made (*Okanogan Wilderness v. Town of Twisp*; *R.D. Merrill Co. v. PCHB*; *PUD Dist. 1 of Pend Oreille v. Ecology*).

From maps provided with the application, it appears 113 acres of a 154 acre irrigation circle and one partial irrigation circle of 100 acres both located in Section 36 of T. 6 N., R. 28 E.W.M. are proposed for transfer. This was confirmed by email with the applicant.

A review of both aerial photography and satellite imagery indicates that development of the land in the area of the two circles did not occur until late 2009 or early 2010. Water appears to have been applied here in 2010 and perhaps in 2011. However, since the 2010 satellite image and 2011 photo suggest either poor growing conditions or limited irrigation, additional information was requested of the applicant. Via email, the applicant indicated that in year 2011 both circles were fallow. However, for year 2010, the applicant provided metering data indicating that one circle (Field 4) received 34.4 inches of water while the other circle (Field 5) received 30.2 inches of water. Converting these values to acre-feet results in approximately 571 ac-ft. This is the maximum amount that would be available for change.

The Washington Irrigation Guide (WIG) can be used to estimate how much water a specific crop requires in a geographic area. The closest data station to the subject area is Kennewick, WA. The applicant indicates that pasture for cattle was grown within the two circles. The WIG indicates that pasture in this area requires 40.66 inches/acre, which does not account for irrigation inefficiencies. The total quantity of irrigation water applied would be expected to be even higher, since center pivots typically have an application efficiency of approximately 85%. The discrepancy in water applied vs. the WIG's water duty indicates that the pasture was not intensely irrigated for the entire irrigation season. The applicant provided additional information via email that this was in fact the case.

RCW 90.03.380 and RCW 90.03.390 (detriment or injury to existing rights):

This change application proposes to seasonally add a downstream point of diversion (POD) to S4-16312(A1)P. The permit authorizes six PODs already, and the additional one would be approximately 1.5 miles downstream from the nearest of the six. The proposed additional POD would divert from the same surface water body, Lake Umatilla (backwater held by John Day



Dam on the Columbia River), as four of the permit's authorized PODs. Adding a downstream point of diversion within the same pool should not reduce the availability of water to intervening water users. Ecology's water right mapping system indicates that there are no intervening surface water users in the 1.5 mile distance between the proposed POD and the permit's nearest authorized one. There are no source-specific limitations on any of the authorized PODs on the permit.

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